IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5679 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHEMARBHAI KESARBHAI CHOUDHARY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5679 of 2004

MR BD KARIA for Petitioner No. 1

Mr. Nagesh Sood, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/08/2004

ORAL JUDGEMENT

Rule. Shri Sood, learned AGP waives service of Rule on behalf of respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. By way of this Special Civil Application under Article 226/227 of the Constitution of India, the

petitioner has challenged the legality and validity of the order passed by the learned Secretary (Appeals), Revenue Department, State of Gujarat, dated 8.3.2004 in Revision Application 30/1999 in dismissing the same and confirming the order passed by the Collector, Mehsana dated 21st March 1999 by which the application of the petitioner for regularisation of encroachment with regard to land bearing No. 308 Paiki admeasuring 4 acres is rejected.

3. The petitioner has submitted an application before the Collector, Mehsana for regularisation of his encroachment with regard to land bearing Survey No. 308 admeasuring 4 acres of land situate at village Aarthi, Taluka Kheralu, District-Mehsana. It seems that the petitioner submitted an application on the basis of the GOvernment resolution dated 8.1.1980. Having found that the petitioner is already holding land admeasuring 4 acres and 20 gunthas of land the Collector, Mehsana rejected the application for regularisation of the encroachment by holding that even as per the Government resolution dated 8.1.1980 the petitioner is not entitled to regularisation of the encroachment. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana, dated 21st March 1999 the petitioner preferred Revision Application before the State Government which was numbered as Revision Application No. 30/1999 which came to be heard by the Secretary (Appeals), Revenue Department, Ahmedabad who by his judgment and order dated 8th March 2004 dismissed the said application and confirmed the order passed by the Collector, Mehsana dated 21st March 1999.

4. Shri BD Karia, learned advocate appearing on behalf of the petitioner has submitted that the order passed by the Collector in rejecting the application of the petitioner for regularisation of the encroachment is contrary to the Government Resolution dated 8th January 1980. According to him if on regularisation of the encroachment if the holding of the petitioner would be more than 8 acres then an order is required to be passed that whatever area beyond 8 acres would be required to be surrendered and the area of land upto 8 acres could only be in the holding. He has further submitted that he is ready and willing to hand over possession of 20 gunthas of land which may be in excess of 8 acres, after regularisation of the encroachment as according to him the petitioner is holding 4 acres and 20 gunthas of land and therefore requested to allow the present Special Civil Application.

5. Shri Sood, learned AGP has submitted that the order passed by the Collector, Mehsana is in consonance with the Government Resolution dated 8th January 1980. He has relied upon sub-clause (2) of Clause 6 of the said resolution and submitted that if it is found by the Collector that hardship would be caused to the person who has encroached upon the Government land and then and then only the encroachment can be regularised. He has submitted that in view of the fact that the petitioner was holding 4 acres and 20 gunthas of land it cannot be said that by not regularising the encroachment there will be hardship to the petitioner. Therefore he has requested to dismiss the Special Civil Application.

6. At this stage, Shri BD Karia, learned advocate has submitted that as such there is no specific finding given by the Collector to the effect that by not regularising the encroachment there will be hardship caused to the petitioner or not. He has submitted that what is not there in an order cannot be explained by Affidavit-in-Reply. He has further submitted that on inquiry the Collector ought to have come to the conclusion that if the petitioner is having sufficient land and that even if the encroachment is not regularised there would be no hardship to the petitioner.

7. Heard the learned advocates appearing for the parties. On going through the Government Resolution dated 8th January 1980 it is evident that it is not that each and every encroachment is required to be regularised by the Collector. The Collector while regularising the encroachment is required to consider so many other aspects which are mentioned in the Government Resolution dated 8th January 1980. The Collector has to satisfy himself whether by not regularising the encroachment there would be hardship to the encroacher or not. In the present case, there is no specific finding given by the Collector, Mehsana while rejecting the application of the petitioner for regularising the encroachment to the effect that by not regularising the encroachment in favour of the petitioner there would be hardship to the petitioner. Under the circumstances, the matter is required to be remanded to the Collector, Mehsana only for that purpose. Accordingly, the matter is remanded to the Collector, Mehsana for deciding the application of the petitioner afresh and in accordance with the Government Resolution dated 8th January 1980 to come to a specific finding whether by not regularising the encroachment in favour of the petitioner there would be hardship to the petitioner or not. The Collector is directed to take the decision independently without in

any way influenced by the earlier orders passed by the Collector, Mehsana as well as Special Secretary. Such an exercise is required to be done within a period of one month from the date of receipt of this order. It will be open for the petitioner to approach the Collector with additional representation or request the Collector to give an opportunity before passing any order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.